

THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LENNY COULOMBE,

Plaintiff,

v.

TOTAL RENAL CARE HOLDINGS, INC.,
DAVITA, INC.,

Defendants.

NO. CV6-504

ANSWER

I. ANSWERS

Defendant DaVita Inc. ("DaVita") f/k/a Total Renal Care Holdings, Inc., in answer to Plaintiff's Complaint, admits, denies and alleges as follows:

1.1 Answering paragraph 1.1 of Plaintiff's Complaint, Defendant admits that Plaintiff is a resident of the State of Washington and that he was employed by DaVita until November 28, 2005. Except as so admitted, Defendant denies the allegations contained in the paragraph.

1.2. Answering paragraph 1.2 of Plaintiff's Complaint, Defendant admits that DaVita is a foreign corporation doing business in the state of Washington, including King County. Except as so admitted, Defendant denies the remaining allegations contained in the paragraph.

1 2.1 Answering paragraph 2.1 of Plaintiff's Complaint, Defendant admits that
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3 Plaintiff was hired by Total Renal Care Holdings, Inc. n/k/a Davita Inc. in August 1996.
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5 Except as so admitted, Defendant denies the allegations contained in the paragraph.
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7 2.2 Answering paragraph 2.2 of Plaintiff's Complaint, Defendant admits the
8
9 same.
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11 2.3 Answering paragraph 2.3 of Plaintiff's Complaint, Defendant admits that
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13 Plaintiff's first position with DaVita, then known as Total Renal Care Holdings, Inc. was
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15 in the accounts receivable department. Except as so admitted, Defendant denies the
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17 allegations contained in the paragraph.
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19 2.4 Answering paragraph 2.4 of Plaintiff's Complaint, Defendant admits that
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21 Plaintiff was paid a salary and provided with employee benefits. Defendant further
22
23 admits that Plaintiff did receive discretionary bonuses at certain times during his
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25 employment. Defendant further admits that Plaintiff was granted stock options during his
26
27 employment. Except as so admitted, Defendant denies the allegations contained in the
28
29 paragraph.
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31 2.5 Answering paragraph 2.5 of Plaintiff's Complaint, Defendant admits that
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33 Plaintiff was granted a stock option in April 1997 pursuant to a written stock option
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35 agreement and stock option plan. Defendant further admits that the original vesting
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37 schedule for the option shares was 25% per year on the anniversary date of the
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39 agreement. Defendant further admits that pursuant to the terms of the option agreement,
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41 no shares could vest after termination of Plaintiff's employment. Defendant further
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43 admits that under the terms of the option agreement Plaintiff was to have three months
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45 from his date of termination to exercise any then vested option shares. Except as so
46
47 admitted, Defendant denies the allegations contained in the paragraph.
48

49 2.6 Answering paragraph 2.6 of Plaintiff's Complaint, Defendant admits that
50
51 the expiration date for the option shares granted under the April 1997 option agreement

1 was April 2007. Except as so admitted here, and in paragraph 2.5, above, Defendant
2 denies the allegations contained in the paragraph.
3

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5 2.7 Answering paragraph 2.7 of Plaintiff's Complaint, Defendant admits that
6 Plaintiff was granted a stock option in 1998 for 30,000 shares, pursuant to a written stock
7 option agreement and stock option plan. Defendant further admits that the original
8 vesting schedule for those option shares was 25% per year on the anniversary date of the
9 agreement. Defendant further admits that under the terms of the option agreement, no
10 shares could vest after the termination of Plaintiff's employment. Defendant further
11 admits that under the stock option agreement Plaintiff was to have three months from his
12 date of termination to exercise any then vested option shares. Except as so admitted,
13 Defendant denies the remaining allegations contained in the paragraph.
14
15

16
17 2.8 Answering paragraph 2.8 of Plaintiff's Complaint, Defendant admits that in
18 November 2000, Plaintiff, and other DaVita executives and employees, were asked to
19 voluntarily relinquish some of their option shares, both vested and unvested. Defendant
20 further admits that at that time Plaintiff was vested in three-quarters of his 1997 option
21 shares, and one-half of his 1998 option shares. Except as so admitted, Defendant denies
22 the remaining allegations contained in the paragraph.
23
24

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26 2.9 Answering paragraph 2.9 of Plaintiff's Complaint, Defendant admits that
27 Plaintiff was an "at-will" employee at all times during his employment with DaVita.
28 Except as so admitted, Defendant denies the allegations in this paragraph.
29
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31
32 2.10 Answering paragraph 2.10 of Plaintiff's Complaint, Defendant admits the
33 same.
34

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36 2.11 Answering paragraph 2.11 of Plaintiff's Complaint, Defendant admits the
37 allegations except that Defendant denies that Plaintiff was advised on or about November
38 30, 2005.
39
40

1 2.12 Answering paragraph 2.12 of Plaintiff's Complaint, Defendant admits that
2
3 in December 2005, Plaintiff attempted to exercise the option shares he had previously
4
5 relinquished. Except as so admitted, Defendant denies the allegations in the paragraph.
6

7 2.13 Answering paragraph 2.13 of Plaintiff's Complaint, Defendant admits that
8
9 in January 2005, DaVita did not permit Plaintiff to exercise the option shares he had
10
11 previously relinquished. Except as so admitted, Defendant denies the allegations in the
12
13 paragraph.
14

15 2.14 Answering paragraph 2.14 of Plaintiff's Complaint, Defendant admits that it
16
17 did not permit Plaintiff to exercise certain stock options because he had relinquished
18
19 those options. Except as so admitted, Defendant denies the allegations in the paragraph.
20

21 2.15 Answering paragraph 2.15 of Plaintiff's Complaint, Defendant admits the
22
23 same.
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25 2.16 Answering paragraph 2.16 of Plaintiff's Complaint, Defendant admits that
26
27 Plaintiff was promoted in 1999. Except as so admitted, Defendant denies the allegations
28
29 in the paragraph.
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31 2.17 Answering paragraph 2.17 of Plaintiff's Complaint, Defendant admits that
32
33 from approximately May 1999 through June 2002, Plaintiff reported to Jonathan Wallin.
34
35 Except as so admitted, Defendant denies the allegations in the paragraph.
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37 2.18 Answering paragraph 2.18 of Plaintiff's Complaint, Defendant admits that
38
39 during the period 1999 through 2002, Plaintiff received certain discretionary bonuses.
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41 Except as so admitted, Defendant denies the allegations in the paragraph.
42

43 2.19 Answering paragraph 2.19 of Plaintiff's Complaint, Defendant admits that
44
45 during the period 1999 through 2002, Plaintiff received certain salary increases. Except
46
47 as so admitted, Defendant denies the allegations in the paragraph.
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1 2.20 Answering paragraph 2.20 of Plaintiff's Complaint, Defendant admits that
2
3 in November 2002, Plaintiff began reporting to Lori Pelliccioni. Except as so admitted,
4
5 Defendant denies the allegations of the paragraph.
6

7 2.21 Answering paragraph 2.21 of Plaintiff's Complaint, Defendant, based on
8
9 current information and belief, lacks sufficient information to respond to the allegations
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11 contained in the paragraph, and therefore denies the same.
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13 2.22 Answering paragraph 2.22 of Plaintiff's Complaint, Defendant, based on
14
15 current information and belief, lacks sufficient information to respond to the allegations
16
17 contained in the paragraph, and therefore denies the same.
18

19 2.23 Answering paragraph 2.23 of Plaintiff's Complaint, Defendant denies the
20
21 same.
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23 2.24 Answering paragraph 2.24 of Plaintiff's Complaint, Defendant admits that
24
25 Plaintiff received a discretionary bonuses for certain years prior to 2004 but denies that
26
27 he received a discretionary bonus for each of the seven years prior to 2004.
28

29 2.25 Answering paragraph 2.25 of Plaintiff's Complaint, Defendant admits that
30
31 the only performance review of Mr. Coulombe conducted by Lori Pelliccioni reflected
32
33 that Plaintiff's performance met or exceeded expectations in the identified categories.
34
35 Except as so admitted, Defendant denies the allegations in the paragraph.
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37 2.26 Answering paragraph 2.26 of Plaintiff's Complaint, Defendant, based on
38
39 current information and belief, lacks sufficient information to respond to the allegations
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41 contained in the paragraph, and therefore denies the same.
42

43 2.27 Answering paragraph 2.27 of Plaintiff's Complaint, Defendant denies the
44
45 same.
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47 3.1 Answering paragraph 3.1 of Plaintiff's Complaint, Defendant denies the
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49 allegations of the paragraph.
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1 3.2 Answering paragraph 3.2 of Plaintiff's Complaint, Defendant denies the
2 allegations of the paragraph.
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4 3.3 Answering paragraph 3.3 of Plaintiff's Complaint, Defendant denies the
5 allegations of the paragraph.
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7 3.4 Answering paragraph 3.4 of Plaintiff's Complaint, Defendant denies the
8 allegations of the paragraph.
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10 3.5 Answering paragraph 3.5 of Plaintiff's Complaint, Defendant denies the
11 allegations of the paragraph.
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13 3.6 Answering paragraph 3.6 of Plaintiff's Complaint, Defendant denies the
14 allegations of the paragraph.
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16 4.1 Answering paragraph 4.1 of Plaintiff's Complaint, Defendant denies the
17 allegations of the paragraph.
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19 5. Answering Plaintiff's Prayer for Relief (paragraphs 5.1-5.7), Defendant
20 denies that plaintiff is entitled to any relief whatsoever.
21

22 **II. DEFENSES AND AFFIRMATIVE DEFENSES**

23 WHEREFORE, Defendant set forth the following affirmative defenses:
24

25 1. Plaintiff fails to state a claim upon which relief may be granted.
26

27 2. Plaintiff's claims are barred, in whole or in part, because he failed to
28 mitigate his damages, if any.
29

30 3. Plaintiff's claims are barred, in whole or in part, by the equitable doctrines
31 of, waiver, promissory estoppel, and equitable estoppel.
32

33 4. Plaintiff's claims are barred, in whole or in part, by the applicable statute(s)
34 of limitation and/or laches.
35

5. Plaintiff abandoned the stock option agreements through his voluntary relinquishment of his rights under those agreements, thereby excusing further performance by DaVita.

6. Plaintiff voluntarily rescinded his rights under the stock option agreements through his voluntary relinquishment of those rights, thereby excusing further performance by DaVita.

7. Plaintiff waived his rights under the stock option agreements through his voluntary relinquishment of those rights, thereby excusing further performance by DaVita.

8. Plaintiff and Defendant mutually amended and modified the terms of the stock option agreements through their conduct.

10. Plaintiff's claim for recovery of exemplary damages is barred because the conduct of Defendant was not reckless, malicious, willful, or grossly negligent and because exemplary damages are not otherwise recoverable or warranted in this action.

III. PRAYER FOR RELIEF

Having fully answered the Complaint, Defendants pray as follows:

A. That the Complaint be dismissed with prejudice;

B. That Defendant be awarded its costs and attorneys' fees; and

C. That the Court award Defendant such other and further relief as the Court deems just and equitable.

1 DATED: April 17, 2006.
2
3

4 s/ James Sanders, WSBA #24565
5 James Sanders, WSBA #24565
6 Brian Flock, WSBA #36919
7 **Perkins Coie LLP**
8 1201 Third Avenue, Suite 4800
9 Seattle, WA 98101-3099
10 Telephone: 206-359-8000
11 Fax: 206-359-9000
12 E-mail: JSanders@perkinscoie.com
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16 Attorneys for Defendant
17 DaVita Inc.
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CERTIFICATE OF SERVICE

On April 17, 2006, I caused to be served upon counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the following documents:

DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES

David E. Breskin	—	Via hand delivery
Short Cressman & Burgess, PLLC	—	Via U.S. Mail, 1st Class,
999 Third Avenue, Suite 3000		Postage Prepaid
Seattle, WA 98104-4088	—	Via Overnight Delivery
Attorneys for plaintiff	—	Via Facsimile
	<u>X</u>	Via E-filing

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at Seattle, Washington, this 8th day of February, 2005.

s/ James Sanders

State Bar Number: 24565

Attorneys for Defendant

Perkins Coie LLP

1201 Third Avenue, Suite 4800

Seattle, WA 98101-3099

Telephone: (206) 359-8000

Fax: (206) 359-9000

E-mail: JSanders@perkinscoie.com